

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

KATHLEEN B.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES  
REGIONAL CENTER,

Service Agency.

OAH No. 2011010478

**DECISION**

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 4, 2011, in Los Angeles.

Kathleen B. (claimant) was present and represented herself.<sup>1</sup>

Johanna Arias-Bhatia, Fair Hearing Manager, represented South Central Los Angeles Regional Center (SCLARC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 4, 2011.

**ISSUE**

Is Claimant eligible under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to receive services from the Service Agency?

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. Claimant is an unconserved 50-year-old woman.

---

<sup>1</sup> Initials are used to protect claimant's privacy.

2. On December 21, 2010, the Service Agency notified claimant of its determination that claimant is not eligible for regional center services because she does not meet the criteria set forth in the Lanterman Act. Gricelda E. James, M.A., Intake Program Manager, wrote to claimant that it had received from her:

a Clinical Evaluation completed on 10-11-10 by an unknown provider with several modifications made by you. . . . You further provided a Medical Eligibility Note date 11-31-06 from John Sullivan, M.D./Redwood Coast Regional Center. You additionally refused to sign any release of document requests so that we could not [*sic*] obtain additional information regarding your evaluations [from] at least two other regional centers.

The letter stated that the interdisciplinary team:

reviewed the record listed above and found that you do not meet the definition of a developmental disability in [the Lanterman Act] for the following reasons: you were diagnosed with a Pervasive Developmental Disorder, NOS; Depressive Disorder, NOS; Mathematics Disorder (based on previous report) and a Learning Disorder, NOS (based on previous report).

Regional Center serves persons with developmental disabilities as defined in [the Lanterman Act], that is, mental retardation, cerebral palsy, epilepsy, autism and disabling conditions closely related to mental retardation or requiring treatment similar to mental retardation.

The letter stated that the core staffing team recommended that claimant obtain psychiatric treatment, psychotherapy, and medication monitoring, as well as vocational training. (Ex. 1.)

3. On January 11, 2011, claimant filed a fair hearing request to appeal the Service Agency's determination regarding eligibility and to request that she be tested "to supplement evidence of current disability." (Ex. 2.) Claimant did not specify the grounds for contesting the Service Agency's eligibility decision.<sup>2, 3</sup>

---

<sup>2</sup> A prior Fair Hearing Request was dismissed for lack of jurisdiction. (OAH No. 2011070858.) After the January 11, 2011, Fair Hearing Request was filed but prior to this hearing, claimant submitted a third Fair Hearing Request "for peremptory damage to my pending eligibility hearing." Claimant explained that the third Fair Hearing Request was intended to reiterate the issues raised in the dismissed Fair Hearing Request, namely, that until various complaints that claimant is pursuing through other avenues are resolved, the ability to conduct a fair hearing on the issue of eligibility may be compromised. After much discussion at the commencement of this hearing, however, claimant requested that this hearing proceed on the substantive issue of eligibility and agreed that eligibility may be

### *Claimant's Background*

4. Claimant is estranged from her mother and from her brothers and sisters; her father is deceased, and there was no evidence that she has any other family. Claimant sleeps at the New Image Emergency Shelter in Los Angeles and has done so for the past four years. Claimant is currently unemployed; she receives SSI and Social Security payments.

5. Claimant was referred to the Service Agency by someone claimant identified only as a licensed psychologist with a Ph.D. who prepared a Clinical Evaluation dated October 11, 2010, after assessing claimant on August 4 and September 29, 2010 (Ex. 6). Claimant redacted the Clinical Evaluation to remove the examiner's name as well as other information.<sup>4</sup> Claimant testified that she did not feel comfortable including the psychologist's name without legal advice because the report contained some inaccuracies.

6. Rosalinda Mata, M.S.W., a Service Agency Intake and Assessment Unit service coordinator, wrote a social assessment report dated May 5, 2011, after meeting with claimant. Ms. Mata reviewed the October 2010 Clinical Evaluation. She wrote that claimant was "seeking eligibility as an individual with an autism spectrum disorder." Ms. Mata recommended presenting all findings to the Service Agency's interdisciplinary team for an eligibility determination.

7. Gabrielle du Verglas, Ph.D., conducted a psychological evaluation of claimant on behalf of the Service Agency, meeting with claimant on July 11 and on August 3 and 5, 2011, and spending additional time reviewing claimant's records. Dr. du Verglas testified at hearing that she is a clinical psychologist licensed in California with expertise in autism. She served as Executive Director of the Autism Training Center at the University of West Virginia, and has trained professionals in the diagnosis and treatment of people with autism. Dr. du Verglas has consulted for regional centers for 20 years, primarily conducting

---

decided before her other complaints in other forums are resolved. Those other complaints include consumer grievances alleging ineffective assistance by the Office of Clients Rights Advocacy; a Title 17 Consumer Rights complaint, a Welfare and Institutions Code section 4731 complaint, and a "whistleblower complaint" before the Department of Developmental Services (Department); a small claims case against Redwood Coast Regional Center; and a complaint to the State Bar of California.

<sup>3</sup> At hearing, claimant testified that she should qualify for services based on a diagnosis of autism due to an evaluation she received diagnosing her with Pervasive Developmental Disorder Not Otherwise Specified (PDD NOS).

<sup>4</sup> In a section of the report where claimant made one redaction, she inserted a "Patient Imposed Addendum" that stated that, "Unfortunattely [*sic*], here the Psychologist Attempted to interject irrelevant personal opinion of an area clearly outside her area of expertise, and not based on the clinical interview which focused solely on Autism Spectrum Disorder. Incomplete historical information was discussed."

psychological tests to determine eligibility for regional center services. Claimant served as a self-informant at her psychological evaluation; developmental history had to be gathered from the records, as Dr. du Verglas had no access to claimant's biological mother.

8. The records Dr. du Verglas reviewed included a psychosocial intake report from another regional center, where claimant was determined ineligible. The report included information from claimant's mother, but did not include information about claimant's attainment of developmental milestones. A neurological and psychiatric examination was conducted by John S. Woodward, M.D., who on April 5, 1985, reported claimant's difficulties with employment and concluded that claimant "would benefit from ongoing services of a . . . mental health clinic." (Ex. 4.) The records reflect that claimant has been diagnosed with hypothyroidism and depression, has been treated with medication, and had no history of seizures.

9. The records also included the psychological evaluation that claimant redacted. Dr. du Verglas found the most pertinent information in that evaluation to be that the author of the report was not unable to diagnose claimant with autism, nor did the author find that claimant had Asperger's Disorder. Rather, the author diagnosed claimant with PDD NOS, reflecting deficits in adaptive functioning. The author found no stereotyped patterns of behavior and no restricted interests. The author did find that claimant displayed symptoms of Fetal Alcohol Syndrome, although in early evaluations claimant's mother had not reported alcohol use. Dr. du Verglas noted that "the speculation as to the diagnosis of Fetal Alcohol Syndrome would require medical review by a physician specializing in the diagnosis of" that condition. (Ex. 4.)

10. Claimant provided Dr. du Verglas with information about her educational and employment history; she said that she graduated from Bassett High School in La Puente and obtained an A.A. degree in sociology. She had worked in various jobs, but has been unemployed for some years. "She takes public transportation independently, does her own banking, shopping and has for many years lived independently. With the exception of living in a shelter, due to financial difficulties, she did not require assistance maintaining independent residence." (Ex. 4.)

11. Dr. du Verglas observed that claimant was cooperative and tried her best on the various instruments Dr. du Verglas administered. In addition to her observations, clinical interview, and records review, Dr. du Verglas administered the following tests: Wechsler Adult Intelligence Scales—4th Edition (WAIS-IV); Wide Range Achievement Test (WRAT-3); Vineland Adaptive Behavior Scales, 2nd Edition (Vineland-II); Childhood Autism Rating Scale (CARS-2); Gilliam Autism Rating Scale—2nd Edition (GARS-2); Test of Verbal Conceptualization and Fluency (TVCF)—Trails only; Beck Depression Inventory; and Autism Diagnostic Observational Schedule, Module 4 (ADOS, Module 4); she also applied the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), Autism Diagnostic Criteria. In her evaluation, Dr. du Verglas did not diagnose claimant. She wrote that the purpose of the evaluation was "to clarify diagnosis of Autism Spectrum Disorder." (Ex. 4.)

12. In her report, Dr. du Verglas concluded that, based on her evaluation and the scores of the GARS-2, the CARS-2, and the ADOS, all of which fell in the non-autistic or autism-unlikely range,

[claimant] does not meet the criteria for language delays, nor repetitive and stereotyped patterns of behavior required in the diagnosis of Autism or Autism Spectrum Disorder.

[¶] . . . [¶]

Based on the results of this evaluation, [claimant] does not meet the criteria for the diagnosis of Autistic Disorder, as there is no impairment in communication or evidence of any repetitive and stereotyped patterns of behavior. In the social domain, she also did not evidence the type of behaviors frequently seen in the diagnosis such as impairment in eye contact and use of gestures. She asked questions spontaneously . . . .

(Ex. 4.)

13. Applying the DSM-IV criteria for autism, Dr. du Verglas wrote that:

the diagnosis of Autistic Disorder was clearly ruled out based on the rationale described in this report; [claimant] does not show evidence of qualitative impairment in social interaction, communication or restricted and repetitive patterns of behavior prior to age 3.

The diagnosis of Asperger's Disorder was already ruled out in the previous evaluation that was completed by the unknown psychologist, and confirmed through this evaluation. The difference between the diagnoses of Autistic Disorder versus Asperger's Disorder is appropriate communication and language development and adaptive levels of abilities. [Claimant] does not meet the criteria for either diagnosis. . . .

(Ex. 4.)

14. Dr. du Verglas also applied the DSM-IV criteria for PDD NOS (including atypical autism), and rejected that diagnosis:

There is no evidence of stereotyped patterns of behaviors, nor impairment in communication. Furthermore, several of [claimant's] psychiatric diagnoses have made reference to schizoid personality disorder with other mental health diagnoses

such as Schizoaffective Disorder, and possible Borderline Personality Disorder.

[¶] . . . [¶]

Given that this evaluation was requested through [the Service Agency] with the primary objective to assess [claimant's] cognitive and adaptive functioning and evaluate the presence of Autism and Autism Spectrum Disorder, which would include Asperger's Disorder, [and] Pervasive Developmental Disorder NOS, no specific treatment recommendations will be made by this evaluator . . . . Based on review of all available data, there is no support for the diagnoses of Autism, Asperger's Disorder, or Pervasive Developmental Disorder Not Otherwise Specified.

(Ex. 4.)

15. Dr. du Verglas also concluded that claimant is not mentally retarded and that claimant does experience moderate depression, based on scores from the WAIS-IV, the Beck Depression Inventory, and the other instruments applied during her evaluation as well as her observations of claimant.

16. SCLARC's core staffing team considered claimant's eligibility for regional center services, and determined that claimant does not have a developmental disability. Dr. Sandra Watson, SCLARC's staff psychologist, participated in the core staffing team's review of claimant's possible eligibility. The team considered Dr. du Verglas's report; a social assessment report dated May 5, 2011, that Rosalinda Mata, M.S.W., an Intake and Assessment Unit service coordinator, wrote after meeting with claimant; the Clinical Evaluation dated October 11, 2010, written by the unidentified psychologist, and a January 31, 2006, Medical Eligibility Note written for Redwood Coast Regional Center by John Sullivan, M.D., who concluded that claimant "has a documented learning disability, chronic psychiatric problems, and no evidence of diagnosed mental retardation, and cognitive and adaptive functions do not appear even close to similar to those of a person with mental retardation. . . . Her service need would be that of [a] person with psychiatric illness, learning disabilities, and difficulties in adjusting to these problems." Dr. Watson testified that the team concluded that there was no evidence that claimant has seizure disorder, cerebral palsy, mental retardation, autism, or a disabling condition closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation.

17. Claimant testified that she does not contend that she is mentally retarded but that she has PDD NOS and atypical autism. While her autism may be borderline, she testified, her needs are the same as someone with full autism. Claimant believes that PDD NOS is a variant of autism. Claimant contends that the medical records from the mid-1980s that were reviewed by Dr. du Verglas reflect that there was not a sufficient array of tests for autism at that time. She believes that Dr. Woodward's diagnosis, which Dr. du Verglas reviewed, is consistent with the unnamed psychologist's diagnosis of PDD NOS in October

2010. Claimant testified that she has done her best to inform those examining her about her condition before the age of three, because she is trying to get the best care and the most accurate diagnoses, but she is limited in her ability to do so because her parents are not available to provide information about her early development. Claimant testified that she would like opportunities to engage socially with others but that she has limited socialization opportunities at the shelter where she sleeps, because many who stay there have mental health issues. Claimant testified that, despite Dr. du Verglas's report of her successful functioning, the fact that she sleeps in an emergency shelter demonstrates that she has issues with respect to her ability to function, and that she should be receiving regional center services.

## LEGAL CONCLUSIONS

1. Cause exists to deny claimant's request for regional center services, as set forth in Factual Findings 1 through 12, and Legal Conclusions 2 through 5.

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that she is eligible for government benefits or services. (See Evid. Code, § 115.)

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) To establish eligibility for regional center services under the Lanterman Act, claimant must show that she suffers from a developmental disability that "originate[d] before [she] attain[ed] 18 years old, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for [her]." (Welf. & Inst. Code, § 4512, subd. (a).) "Developmental disability" is defined to include mental retardation, cerebral palsy, epilepsy, autism, and "disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature." (*Id.*)

4. The determination of eligibility for services under the Lanterman Act is initially made by the regional center. "In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).)

5. Claimant did not establish by a preponderance of the evidence that she has a qualifying diagnosis of autism or of any other eligible condition. (Factual Findings 4 through 17.) The Service Agency's evidence, primarily the testimony of and the psychological evaluation performed by Dr. du Verglas, was persuasive in establishing that claimant does not have a qualifying condition under the Lanterman Act. (Welf. & Inst. Code, § 4512, subd. (a).) No qualifying developmental disability was established by any report submitted by

claimant or considered by Dr. du Verglas. Even if full weight were accorded to the October 2010 Clinical Evaluation, despite its unknown authorship, redacted signature, and other redacted language, and despite Dr. du Verglas's disagreement with the author's diagnosis, the author of the report diagnosed claimant with PDD NOS. PDD NOS does not fall within the definition of "autistic disorder" in the DSM-IV, which is used to determine eligibility under the Lanterman Act for regional center services. PDD NOS, like Asperger's Disorder, is an autism spectrum disorder, but not all conditions on that spectrum fall within the narrower DSM-IV definition of "autistic disorder."

#### ORDER

Claimant Kathleen B.'s appeal is denied; South Central Los Angeles Regional Center's decision denying claimant's request for regional center services is affirmed.

DATE: November 7, 2011

---

HOWARD W. COHEN  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.